

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES R. DURKEE, DAVID CRAWFORD GIBBON
and BEHZAD SHAHRARAY

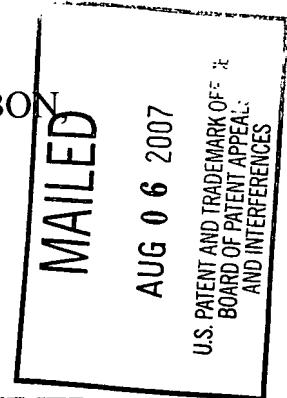
Application 09/848,581
Technology Center 2600

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on July 21, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, this application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

On May 22, 2006, an Examiner's Answer was entered into the record. In the Evidence Relied Upon section, pp. 2-3, paragraph 8, the Examiner has failed to list Vallone (US 6,642,939) and Bertram (US 5,606,374) as applied to the statement of rejections in the Grounds of Rejection, paragraph 9 of the Examiner's Answer. Further review of the Examiner's Answer reveals that the Examiner fails to list a statement acknowledging that the Appeal Brief has identified by name the real party in interest, paragraph 1. *See the Manual of Patent Examining Procedure, (MPEP) § 1207.02(A)(1).*

Before further review, the Examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, a listing of *all* references mentioned in



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the Grounds of Rejection, paragraph 9, and also provide a statement acknowledging the real party in interest, paragraph 1. *See MPEP § 1207.02.*

Accordingly, it is *ORDERED* that the application is returned to the Examiner:

- (1) to issue and mail a PTOL-90 which shall include all references mentioned in paragraph 9 (Grounds of Rejection), in accordance with the above instruction; and,
- (2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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